INTERIM REPORT OF THE 1988-1989 CIVIL GRAND JURY;

RESPONSE OF THE OFFICE OF THE PUBLIC DEFENDER

AND ATTACHMENTS

CITY AND COUNTY OF SAN FRANCISCO
GRAND JURY

OFFICE
ROOM 165, CITY HALL
TELEPHONE 558-3010

May 16, 1989

Honorable Jeff Brown
Public Defender's Office
555 Seventh Street
San Francisco, CA 94103

Dear Mr. Brown:

The 1988/89 Civil Grand Jury adopted the enclosed Interim Report on May 8, 1989 and will release it to the public following its delivery to you.

The Report is the result of a study of many months by the Jury. It is being released in advance of the yearly report because of implications for the Superior Court budget now being prepared.

Please feel free to call me should you have any questions.

Sincerely,

Caryl Mezey

Caryl Mezey
Forewoman

1988 - 1989

CIVIL GRAND JURY

INTERIM REPORT

May 16, 1989

PUBLIC DEFENDER'S OFFICE

CITY AND COUNTY
OF SAN FRANCISCO
CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO
GRAND JURY

OFFICE
OOM 165, CITY HALL
LEPHONE: 558-5010

May 16, 1989

Honorable Daniel M. Hanlon
Presiding Judge, Superior Court
City Hall, Room 411
San Francisco, CA 94102

Dear Judge Hanlon:

With this letter the 1988 - 1989 Civil Grand Jury transmits to you its first interim report, adopted by the Jury on May 8, 1989. The report deals with the Public Defender's Office, which was investigated by one of our committees. The committee reported to the Jury as a whole regularly throughout the year. As a result, the Jury has detailed knowledge of the investigation and voted to adopt the committee recommendations unanimously.

In reading the report you will note that the concluding recommendation is that the Superior Court contract for a comprehensive audit of the Public Defender's Office. Audits within the City can be conducted by the Budget Analyst of the Board of Supervisors upon request of the Board. They can also be done by the Controller, whose scope can go beyond dollars and cents to look at management practices and performance. And, in counties throughout California audits can be contracted for by the Civil Grand Jury when sufficient funds are included in the Jury's budget.

This Grand Jury would have preferred to have conducted the audit themselves. However, the funds necessary to accomplish this task were not included in the Jury's 1988/89 budget by the Board of Supervisors. Therefore, the Jury looks to the Superior Court, under whose auspices it operates, to contract for the audit. Should it not be in its jurisdiction to do so, this Jury suggests that the Court instruct the 1989/90 Civil Grand Jury to do so. This would mean that the Court would need to ensure that sufficient funds were included in the budget being prepared at this moment.

Respectfully submitted,

Caryl Mezey

Caryl Mezey
Foreswoman

MEMBERS OF THE 1988 - 1989

CIVIL GRAND JURY

IN AND FOR THE

CITY AND COUNTY OF SAN FRANCISCO

David M. Bidwell
Larry M. Giles
Deborah V. Green
Lydia Herrera
Elroy D. Joyce
Lonnie Lawson
Gary H. Love (resigned 5/89)
Leo G. McCarthy
Joseph Mignola, Jr.
Anne K. Morshead
John M. Mortz
Dugald R. Stermer
Millicent M. Susens
Winston G. Q. Tang
Denise B. Wall
Jacqueline L. Young

Mary Ellen Wilson, Secretary

Nathaniel C. Berkowitz, Foreman Pro Tem

Caryl C. Mezey, Forewoman

Impaneled July 1, 1988

PUBLIC DEFENDER'S OFFICE - INTERIM REPORT

BACKGROUND

The Sixth Amendment to the Constitution guarantees criminal defendants the right to legal counsel. The Supreme Court of the United States has interpreted this to mean that federal, state and local governments must provide legal counsel for those criminal defendants unable to afford counsel. In San Francisco the Office of the Public Defender provides representation to these defendants.

In San Francisco the Public Defender is elected and is responsible for the overall organization and management of the Office of the Public Defender. All other Public Defenders in California, and most in the nation, are appointed.

The Public Defender hires all professional personnel for the Office. The support staff is Civil Service.

The Public Defender appoints the Chief Attorney, who serves as his assistant. It is the Chief Attorney who administers the day-to-day operation of the department, recommends policy and office procedures, supervises and coordinates the several Unit Managers, is operational head of the department in the absence of the Public Defender, investigates and reports upon all complaints against personnel of the department, and performs other duties as assigned by the Public Defender.

Under the Chief Attorney are Head Attorneys who are directly responsible for the divisions within the office (Misdemeanor Unit, Felony Unit, Mental Health Unit, Juvenile Unit, Research Unit and Investigative Unit). There is an Administrative Unit that is supervised by the Executive Assistant, who also functions as confidential personal secretary to the Public Defender and the Chief Attorney. The Public Defender is authorized sixty-six attorneys, twelve investigators, one executive assistant and twenty-two support positions.

The Public Defender's Office is located in a building that is leased by the City and County of San Francisco, in close proximity to the Hall of Justice, where the criminal courts are located. The Office utilizes the Court Management System, a computer system located at the Hall of Justice. Word processing is done through the City and County's Wang system. There are also several independent personal computers within the office.

The 1988/89 Civil Grand Jury reviewed the Public Defender's Office focusing on the following areas:

I. OPERATIONS AND MANAGEMENT
   A. General Management
   B. Investigative Unit
   C. Research Unit

II. PERSONNEL
   A. Hiring
   B. Promotions
   C. Disciplinary Action

III. TRAINING AND EDUCATION

IV. CASELOAD MANAGEMENT

I. OPERATIONS AND MANAGEMENT

A. General Management

FINDINGS

Hours

Operation of the Public Defender's Office is guided by the Manual of Policies and Procedures, authored by the incumbent, printed 4/1/87. The Manual states that "attorney personnel shall maintain office hours beginning at 8:30am, one hour for lunch, and terminating no earlier than 5:00pm, or as much later as may be required to complete the caseload assignments of the attorney, including non-courtroom days." However, many choose to work evenings and weekends instead of regular office hours. In addition, some testimony indicated that work other than that assigned takes place within the office during the required daytime hours.

The Public Defender is often absent from the office to promote outside interest in his office and to propose and speak on pending legislation affecting his duties. Other staff have outside activities which at times conflict with stated office

hours. The Chief Attorney teaches a class in criminal procedure at Hastings Law School from 11:40 to 1:30 two days a week. He has taught since 1981. The Chief Attorney is currently the president of the San Francisco Bar Association.

Organization

With the exception of the Administrative Unit, all units in the Office are managed by a Head Attorney (all of whom earn in excess of $80,000) regardless of the unit's size or function. The workload is divided along these unit lines and assignment is as follows:

Unit	# of Deputies	# of Supervising Head Attys
Misdemeanor	17	2
Felony	34	2
Juvenile	7	1
Mental Health	2	1
Investigation	0	1
Research	0	1

The Chief Attorney determines assignment to the units. Testimony indicates that assignments are sometimes arbitrary and may be used for disciplinary reasons. Unit managers do not always participate in or supervise the work in their respective areas. Less experienced attorneys need the support and guidance of supervisors and peers. Group discussions within the office have been discouraged.

RECOMMENDATIONS

1. **The Public Defender should enforce the office hours as stated in the Manual.**

2. **The Public Defender should determine the cost effectiveness and need for the use of Head Attorneys as supervisors of each unit.**

3. **The Public Defender should encourage attorneys to participate in group discussions relating to their cases.**

B. Investigative Unit

FINDINGS

The Investigation Unit consists of twelve (12) investigators, currently supervised by a Head Attorney whose primary experience has not been as an investigator. The present Chief Investigator also supervises building security, and is responsible for expungements and the Court Management System, including the budget. The Head Attorney uses his own discretion in evaluating the requests from attorneys for investigative support. There is no appeal to his decisions, even though inadequate investigation may adversely impact an attorney's case in court.

RECOMMENDATIONS

4. **The Public Defender should appoint the most skilled investigator to be Chief of the Investigative Unit, and not necessarily an attorney.**

5. **The Public Defender should ensure that the Investigative Unit serves the needs of the defense attorneys by complying with the requests of the attorneys.**

C. Research Unit

FINDINGS

The Research Unit consists of a Head Trial Attorney and two assistants. It is responsible for the maintenance of the library, the collection of legal writings, the maintenance and expansion of the brief bank, the preparation and distribution of training materials for attorney personnel and the coordination

and technical supervision of the volunteer law students and the collection of jury data. The Grand Jury found that many of these responsibilities have not been met.

Several witnesses testified that if the Head of Research was not in the office there was no access to needed materials. The Research Unit is locked evenings and weekends even though attorneys frequently work those hours. In a letter to the Grand Jury, the Public Defender stated that,

> "...There is a smaller group of briefs that are housed next to the library in the computer room. The room is locked at night and on weekends for security reasons. But arrangements can be made to accommodate a person's immediate need. My home number and that of the supervising Head Attorney are additionally listed."

In addition, there is no systematic storage of exhibits that have been prepared and could be reused in whole or part, or serve as a guide for the preparation of a new exhibit.

It is the responsibility of the Research Unit to supervise volunteer law students; frequently there were no law students to supervise. The office has no program to recruit law students or law clerks. Any attorney wanting a legal assistant must recruit this help on his/her own. Law clerks are an excellent pool of prospective deputies.

RECOMMENDATIONS

6. **The Public Defender should ensure that his staff has full access to all research files, taking into consideration weekend and evening hours when attorneys perform their own research. Keys to the research area should be given to all attorneys.**

7. **The Research Unit should establish a method for maintaining, cataloging and storing reuseable exhibits for access by attorneys.**

8. **The Public Defender should establish and maintain a formal program to recruit and utilize law clerks, students and extern/interns to relieve the individual attorneys of this personnel function.**

II. PERSONNEL

A. Hiring

FINDINGS

Approximately thirty attorney positions became vacant during the years 1987 and 1988, a 44% turnover. When such vacancies occur, advertisements are placed in local legal publications. A representative ad showed no statement of required experience or qualifications. Necessary membership in the California Bar was not mentioned.

Prospective employee's resumes are reviewed by the Public Defender and Chief Attorney. After screening, finalists are scheduled for a first interview, conducted by a committee. The composition of the committee depends on who is in the office at the time; membership is indeterminate and unorganized. One interviewee may face a few attorneys in the first interview, another may face many.

Interviews consist of general legal questions, hypothetical case situations (written and oral), personal background, interests and experience. Successful applicants return for further interview(s) with the Public Defender and Chief Attorney, who make the final decision.

RECOMMENDATIONS

9. **The Public Defender should state what minimum qualifications are required in all solicitations for employment.**

10. **The Public Defender should include benefits and a job description in every ad. The advertisement should be comparable to the other ads that appear in local legal publicaions, bar journals and legal placement publications.**

11. **The Public Defender should name a hiring committee whose members consist of a designated number of experienced senior staff. The hiring committee and other interviewers should be trained in personnel interviewing.**

B. Promotions

The Public Defender states his policy for promotion as:

> "A. Demonstrated proficient performance,
> B. Professional growth,
> C. Ability to accept assignments of a more complex character."

However,

> "the decision to promote is a matter of discretion... The decision to promote is a matter of discretion by me, but it is a matter of guided discretion whereby I have the evaluation of the employee, statistical information about the employee's work, and the recommendation of the supervisor."

Within the Public Defender's Office, long-term professional employees who have expressed interest in promotion testified that such promotions are often awarded to less experienced attorneys. Certain promotions require the California State Bar certification as a Criminal Law Specialist. However, these positions have been known to be filled by attorneys who did not have the certification at the time of the appointment. The Public Defender's discretion is often exercised arbitrarily.

RECOMMENDATIONS

12. **The Public Defender should state specific qualifications for promotion and these should be well-known and be consistently applied.**

13. **The Public Defender should comply with his stated policy that promotional opportunities requiring Criminal Law Specialist certification will open only to those so certified.**

14. **The Public Defender should make certain that persons eligible for promotion, and not selected, be advised as to the reasons.**

C. Disciplinary Action

FINDINGS

The Manual of Policies and Procedures of the Office of the Public Defender, Chapter XXVI states:

> "Any disciplinary action will be governed by these rules and procedures and those of the Civil Service Commission.
>
> DISCIPLINE - IMPARTIAL HEARING. No employee shall suffer any disciplinary action except after being given the opportunity for an impartial hearing.
>
> DISCIPLINE - COUNSELING. For minor matters or at the discretion of the employee's supervisor in more serious matters, the employee shall be counseled by the supervisor relative to the error or omission, and the discipline may take the form of an oral reprimand, written reprimand, or re-assignment of job functions. (Section 262)
>
> DISCIPLINE BEYOND COUNSELING. When the discipline is to exceed that described in the Section 262, the rules of the Civil Service Commission Control, and the discretionary appointees shall be given the opportunity for an impartial hearing, after due notice, before Public Defender." (Section 263)

The Public Defender states that his policy in relation to termination is:

> "A. Malfeasance - clear proof of willful misconduct;
> B. Serious Misfeasance - clear proof that an error or omission of a very serious nature;
> C. Lack of Competence - a demonstrated pattern of inability to handle cases in a competent manner."

He adds:

> "The list of examples of misfeasances, malfeasance, and the standards of minimum competence are set forth on the office manual. The list is not necessarily exhaustive, but it is sufficiently descriptive."

After interviews with present and former employees of the Public Defender's Office, the Grand Jury has found that the stated termination policies are not observed.

No-one interviewed was aware of any consistent termination policy; it was stated to the Jury that attorneys are "here one day and gone the next without explanation." Staff morale suffers because termination policies are not followed. In addition clients have to adjust to a new attorney who is unfamiliar with the specific case . This adds to courtroom delays and potentially flawed representation of the clients involved.

RECOMMENDATIONS

15. **The Public Defender should write the disciplinary portions of the operations and procedures manual so that they are specific, particularly as they relate to professional standards. The Public Defender should enforce the standards that he has set.**

16. **The Public Defender should develop grievance procedures, and implement those procedures on a firm and regular basis.**

III. TRAINING AND EDUCATION

FINDINGS

Attorneys appointed by the Public Defender begin their service in court immediately upon being hired. There is no orientation, training or other initiation to the Office other than reading the Manual of Policies and Procedures and the Misdemeanor Practice and Procedure Manual and going to court. This courtroom "trial by fire" is the usual beginning for a Deputy San Francisco Public Defender.

Inexperienced attorneys and attorneys new to San Francisco first appear in court unprepared for the pace of San Francisco Municipal Court calendars. Supervision is minimal, and at times lacking. There is no consistent training program.

Although there is office policy that states that there are weekly or biweekly training sessions, both the Public Defender and the Chief Attorney have stated that job pressures preclude such training. The Annual Report shows no budget allocations for supplemental education. There is no mention of special training or education for those assigned to the Mental Health or Juvenile Divisions.

RECOMMENDATIONS

17. **The Public Defender should establish an orientation program to train newly hired staff in courtroom procedures.**

18. **Appropriate supervisory personnel should evaluate newly-hired Deputy Public Defenders for a given period of time to make sure they are following accepted procedures and practices.**

19. **The Public Defender should conduct regular and continuing training for all deputies.**

IV. CASELOAD MANAGEMENT

FINDINGS

The Public Defender has declared in the Annual Report, the press and elsewhere an inability to provide representation in the Municipal Courts because of an influx of new narcotics cases. He states that his attorneys have had a significant increase in their workload. However, the statistics from the Public Defender's 1987-1988 Annual Report show that total caseloads have not changed significantly over the last nine years. The total number of cases reported only increased from 22,825 to 22,975. Felony cases went from 5,329 to 5,739. Other areas declined.

The major area of workload increase is in the Mental Health Unit where cases doubled while staff has been decreased. Juvenile cases have risen 50%, also accompanied by a staff reduction.

If, as reported, only three attorneys were assigned to the 5,082 mental health cases in 1987-88, the situation is not only unmanageable, but intolerable.

The caseload in general varies according to the courtroom where assignments are made. Supervisory personnel often take no role in adjusting differentials in caseloads and seldom appear in Municipal Court to help with these discrepancies. This situation seemed to exist in Superior Court as well.

The increases and decreases in the Public Defender's budget do not reflect the stated workload. Changes from the 1987-88 budget to the 1988-89 budget are as follows:

Unit	Increase/Decrease
Support Services	-13.4%
Felony	-10.6%
Research	+9.6%
Misdemeanor	+11.9%
Investigations	+12.1%
Executive Officers	+29.7%

The significant turnover of attorneys in the Public Defender's Office has taken a toll particularly of attorneys with experience in capital cases. The Grand Jury has been told that this turnover has affected the capability of the Office to represent adequately defendants in capital cases.

RECOMMENDATIONS

20. The Public Defender should represent the workload of each attorney as well as the entire department in the Annual Report accurately. He should use the same system for reporting as that used by the court so that statistics can be cross-referenced and verified.

21. **The Public Defender should conduct an internal review of the Mental Health Unit to determine if the needs of the clients are being met. He should consider an alternative system for handling the non-criminal clients.**

22. **The Public Defender should make every effort to ensure that the Head Attorneys review and oversee the workload of those they supervise.**

23. **The Public Defender should make sure that supervisory attorneys are visible and accessible to the courts for which they are responsible.**

24. **The Public Defender should make a serious effort to develop a consistent and experienced capital defense team, with consideration of incorporating private attorneys into the team.**

SUMMARY FINDINGS

Taken as a whole, the findings of the Grand Jury speak to the need for attention to all areas of management in the Public Defender's Office. The Grand Jury concluded that further investigation is necessary to determine if present management practices are affecting the overall performance of the Office.

RECOMMENDATIONS

25. **The Superior Court should contract for a comprehensive audit of the Public Defender's Office with the goal of determining whether performance is being hindered by management practices within the Office.**

PUBLIC DEFENDER RESPONSE

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

555 SEVENTH STREET
SAN FRANCISCO, CALIFORNIA 94103
(415) 553-1671

FF BROWN
blic Defender

PETER G. KEANE
Chief Attorney

May 30, 1989

Members of the Grand Jury
City and County of San Francisco
Room 165, City Hall
San Francisco, Ca. 94102

Dear Ladies & Gentlemen,

I have read the Interim Grand Jury Report on the Public Defender's Office which you delivered May 17. I regret that I was not permitted to review a draft of the report before it was issued and simultaneously made public. My staff and I could have clarified a number of areas which are matters of concern in the report. I appreciate the effort which the members of the panel gave to the task. But the report is seriously flawed; it contains inaccuracies, misinformation, and false statements. There are some suggestions that are appropriate. In order to assist you, I am identifying those areas of appropriate recommendation and those areas of error.

I. Promotions and Terminations

A. The Grand Jury's recommendation that promotion and termination policies should be set forth more clearly is correct. As you know, the City's Charter directs that attorneys in this Department shall serve at my pleasure, and that appointments and terminations are without civil service review. Existing statutes and cases on employment law provide little guidance for this unique employment situation which exists in all three of San Francisco public law offices: Public Defender, City Attorney, and District Attorney.

However, as a Department Head with these powers, I recognize my obligation to establish and to clearly communicate appropriate and fair standards for both appointment and termination. If for no other reason, it is important that the staff knows what is expected of it. So I agree with the suggestion that such standards should be written into the office

manual and that doing so will improve personnel relationships. However, I believe that such standards can only be general in form, since it would not be possible to promulgate a precise set of all encompassing criteria which would apply in every situation.

B. It is not true that promotions and terminations have been done without consistency.

When attorneys are promoted, it is because they demonstrate that they are talented lawyers and hard workers, who have the ability to do the job. It is instructive that although the report labels the promotion process as not consistent, there is no single instance cited where a particular promotion or termination was not appropriate.

C. The report correctly states that people who are not promoted should be told the reasons.

In most instances we have done so. People are told during the regular attorney evaluations, and also told each time there is a promotion of a peer. However, I acknowledge that there were a few instances when particular individuals were not told with sufficient clarity why they were not promoted. You have my assurance that, in the future, there will be more precise communication.

D. Every termination has been for cause: for malfeasance, misfeasance, or incompetence.

As you are aware, I am prohibited from revealing to third parties the specific reasons for termination. But Mr. Keane and I were both prepared, under the safeguards of the Grand Jury's confidentiality provisions, to discuss the specifics of any particular termination about which the Grand Jury might be concerned. We were never asked. I renew the offer at this time and invite your inquiries, if you have any.

E. In most situations where a lawyer's performance is poor there was no need to terminate the individual. Rather, after a candid discussion by the supervisors with the lawyer involved, he or she usually agrees that continued employment is not in the best interests of the clients.

F. As San Francisco's Public Defender, I have consistently fulfilled my obligation to make sure that the lawyers who represent the indigent accused are competent and effective. Hirings, promotions, and terminations have all occurred with that purpose as the primary goal. In order to do this, I have made hard decisions.

It is not surprising that making decisions with career implications, some measure of criticism, antagonism, and spite has resulted. But the end product of those decisions is a talented, tough, and imaginative staff of lawyers who fight hard, and fight well, for their clients under the most difficult of circumstances. And despite the unfortunate tone of inference and innuendo which characterizes the Grand Jury's Report, there is nothing in the document which questions the high quality of the lawyers in this office.

II. Training

A. There can always be more training in any law office, public or private. And, of course, as the Report suggests, it would be desirable if we had the resources for each deputy public defender to receive an extensive round of classroom training before being assigned to a client's case. But the harsh reality is that we are forced to rely to a great extent on on-the-job training.

B. However, the report is in error when it states: "There is no orientation, training or other initiation to the Office other than reading the Manual . . . and the Misdemeanor Practice and Procedure Manual and going to court." (Emphasis in original.)

Classroom attendance is required of misdemeanor attorneys. The manuals you refer to are used in addition to that training.

C. The report at p. 10 states that Mr. Keane and I said that work pressures preclude weekly or bi-weekly training. We did not say that. What we did tell the Grand Jury was that job pressures occur which cause us to not always be able to conduct these regular sessions for the misdemeanor deputies. But, for the most part, these sessions do continue on a regular basis.

D. To my astonishment and to the astonishment of all of my staff, the report says flatly that training sessions have been discontinued. This is not only false, but it flies in the face of much information which was given to the Grand Jury, both in oral testimony and in writing.

(1) For example, deputy public defenders participate through scholarships in program training sessions which are given on a regular basis by the California Public Defenders Association. This is the product of grant money pursuant to Section 11500, et seq. of the Penal Code. Most recently, there was one such program on Saturday, May 27, and 16 of the misdemeanor attorneys attended it on scholarships. A list of such programs is set forth in Appendix A.

(2) The office has a regular system of on-going training for all attorneys which is an acknowledged model for Defender offices statewide. There are regularly-conducted in-house educational sessions on developments in the law, practical courtroom seminars, and sessions on evidence and procedure. Appendix A to this report sets out a list of these programs. It is with considerable and justifiable pride that I state here (as I previously told you) that <u>our in-house office programs are the only training sessions in any Public Defender office in the state which are accredited with the Board of Legal Specialization of the State of California</u>.

(3) Thus, it is unfortunate that you leave the impression that there is an absence of training in the office.

III. <u>Evaluations</u>

A. Recommendation 17 of the report states: "Appropriate supervisory personnel should evaluate newly-hired Deputy Public Defenders for a given period of time to make sure they are following accepted procedures and practices."

That is exactly what we do now. It is what we have done for many years.

B. New attorneys are evaluated in writing after a one-year period. Those attorneys are routinely counseled about their performance by their supervisors during that first year, with particularly close scrutiny and feedback during the first six months. It is regrettable that the Grand Jury did not choose to speak to either one of the misdemeanor supervisors who would have immediately corrected these errors in the Interim Report.

IV. Hiring and Recruitment

A. The report recommends that the Public Defender's Office should state more specifically what the job qualifications and benefits are in the advertisement which we put in the local legal newspapers when we seek applicants for attorney positions.

With all due respect, the recommendation is trivial and unnecessary.

Current advertisements describe what the job is and list the salary. To state that bar membership is required is unnecessary surplusage, since Bar membership is a requirement to practice law in California. Every lawyer knows this or should know it.

B. More disturbing is the Grand Jury's following characterization of the hiring committee: "The composition of the committee depends on who is in the office at the time; membership is indeterminate and unorganized."

This is an outright misstatement.

The facts are that the hiring committee consists of the Head Attorney supervisors of each of the office's units. The committee keeps minutes of its interviews, and it provides a detailed set of recommendations. At times, individual members of the committee may not be able to attend a session, an inevitability in any busy office.

C. The recommendation for a training course in personnel interviewing for the committee members is a good one. The Grand Jury should recommend that the City provide funds for such a program.

V. Caseload Management

A. Juvenile and Mental Health

(1) It is regrettable that the Grand Jury did not see fit to discuss with the Public Defender's Office any of those items about the caseload or about the caseload management in the Juvenile and Mental Health area which are in the report. Had the Grand Jury done so, it would have been able to derive a clearer understanding of the data.

(2) For example, the report states: "The major area of workload increase is in the Mental Health Unit where cases doubled while staff has been decreased. Juvenile cases have risen 50%, also accompanied by a staff reduction."

The flaw in that conclusion is that it comes from a comparison of the 1987-88 caseload with the 1988-89 budget. One simply does not apply to the other. There were staff reductions in 1988-89 and the budget was reduced from $7.3 million to $7.175. With fewer lawyers, there was a corresponding reduction for 1988-89 in both mental health and in juvenile dependency cases. As a result, about 2,000 mental health probable cause hearings, and over 800 juvenile dependency cases were cut from the caseload of the office and assigned to private counsel by the courts in 1988-89.

(3) In addition, although the number of juvenile cases did rise during 1987-88, the overall increase leveled off this year to a figure which is closer to the mean number for such cases between 1979 and 1989. Once again, had the Grand Jury taken the opportunity to speak to the supervisors of the Juvenile and Mental Health Units of the office, this particular error in the report could have easily been avoided.

VI. Caseload Findings

The report states: "The Public Defender has declared in the Annual Report, the press and elsewhere an inability to provide representation in the Municipal Courts because of an influx of new narcotics cases. He states that his attorneys have had a significant increase in their workload. However, the statistics from the Public Defender's 1987-1988 Annual Report

show that total caseloads have not changed significantly over the last nine years. The total number of cases reported only increased from 22,825 to 22,975. Felony cases went from 5,329 to 5,739. Other areas declined."

The report's oversimplistic use of different categories of statistics is simply mixing apples and oranges and extrapolating the results into a conclusion about cucumbers. Total caseloads have remained within a range of 19,680 to 23,249 cases per year. But in the past two years the misdemeanor portion of that total caseload has decreased sharply while felony, mental health, and juvenile cases have risen substantially.

It is incontrovertible that the number of felony cases has in the last two years reached unprecedented levels. It is also incontrovertible that those felony cases require an exponentially greater amount of time, energy, and resources than misdemeanor cases (for a detailed explanation, please see my memorandum of April 1, 1989 to Peter Goldstein, Budget Analyst, Office of the Mayor, the relevant portion of which is attached as Appendix B).

The decision in the Fall of 1988 to eliminate Public Defender presence in one misdemeanor court was based on an unprecedented, temporary rise in felonies which reached crisis proportions during mid-1988. This was an emergency measure. When the caseload level subsided, the emergency ended and the deputy public defenders were restored to that court.

During that emergency permission was sought and granted from the Municipal Court to relieve the Public Defender of the duty of representation of cases in that particular courtroom. It should be noted that in that courtroom a misdemeanor trial department was added in January, 1987. The Public Defender undertook to staff this sixth trial court at that time, with no increase to our staff. However, given our later staff reduction and rising caseload, the presence of the Public Defender in this extra department became impossible.

VII. Caseload Differentials

On page 11, at paragraph 2, the report states:

"The caseload in general varies according to the courtroom where assignments are made. Supervisory personnel often take no role in adjusting differentials in caseloads and seldom appear

in Municipal Court to help with these discrepancies. This situation seemed to exist in Superior Court as well."

These assertions are patently false.

Supervisory personnel do appear daily in both the Municipal and the Superior Courts. In fact, during the past two years, the two Felony Supervisors have personally managed and appeared in Department 22, the Master Calendar Department of the Superior Court, on a daily basis. Had the Grand Jury inquired of the supervisors, they would have readily provided this information.

C. In regard to caseload discrepancies: adjustment of caseload differentials is always problematic because of the system of "zone representation" which the court system uses and which we must accommodate. This "zone representation" involves assigning deputies to individual courtrooms. Since this is the only practical method which fits the operational mode of the courts, there is no alternative but to follow it.

The nature of a large Defender office, such as San Francisco's, simply does not allow for the assignment of cases to individual lawyers without regard to a particular courtroom "zone." To do so results in chaotic calendaring problems. It happened when it was tried in 1979.

As a result, so long as the cases are assigned on the basis of particular courts, individual lawyer's caseloads will reflect the practices, effectiveness, and personalities of the particular judge of each court.

In spite of this some degree of equalization, adjustment of caseloads does occur. Felony supervisors constantly make selective assignments of motions to revoke probation and of serious felony cases for that purpose. In the misdemeanor departments, the managers adjust the number of deputies assigned to each courtroom and individually assign serious misdemeanor cases. (Detailed records exist and could have been available to the Grand Jury.)

VIII. <u>Turnover</u>

A. The report states, without comment: "Approximately thirty attorney positions became vacant during the years 1987 and 1988, a 44% turnover." [Cumulatively for the two-year period]. Although in the Report no judgment is drawn from these figures, the foreperson of the Grand Jury made statements,

outside of the Grand Jury process, to the media that this turnover was significantly higher than that of other Public Defenders offices. (See, e.g., S.F. Examiner, May 18, 1989, at C-28.)

B. These press statements were misleading.

Of the 29 lawyers who left during those two years, three positions were lost to the office because of budget cuts by the City. One of the 26 remaining lawyers has since returned to the office after a short period in another job.*

Of the approximate 19% office turnover in each of those two years--the accurate adjusted figure--this is not significantly different from many Defender offices similarly situated. Public Defender work is difficult and demanding in the best of circumstances. During those two years, society witnesses the beginning of the crack epidemic which had a devastating effect upon the court system and all those involved.

As a result, there has been an unprecedented exodus of attorneys from both prosecutor and defender offices in cities with similar problems, here and throughout the nation. Crack and the heavy caseload have much to do with it.

C. More compelling, the average time in service of the attorneys who left the San Francisco Public Defender during 1987-88 was 5 2/3 years. This is comparable to the historic pattern of the office.

D. Another factor to be considered is that legal market in the Bay Area for skilled and trained trial lawyers is booming. As a matter of course, after five or six years, public defenders become top-notch trial lawyers. Thus, many who left were marketable at significantly higher salaries. Exacerbating the competitive situation, city government froze salaries and allowed no cost of living raises for all employees, including the attorneys.

In light of all these factors, it is surprising, and a tribute to the public spirit of the office's lawyers, that the turnover is as modest as it is, and that the lawyers stay for such long periods of time as they do.

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*Another attorney who left in 1986 has returned as well.

IX. Turnover and Capital Cases

A. On page 11 the report states: "The significant turnover of attorneys in the Public Defender's Office has taken a toll particularly on attorneys with experience in capital cases. The Grand Jury has been told that this turnover has affected the capability of the Office to represent adequately defendants in capital cases."

This assertion is false.

B. The facts are that four attorneys with varying degrees of involvement left the office in 1987 and 1988. Two of those lawyers had been removed from a capital case, because they did not provide adequate representation to their respective clients. The third lawyer who left to go into private practice had been a second counsel in one capital case. At the time he left the case was still in a preliminary stage. A fourth attorney retired in 1988, and he had indicated late in 1987 that his health did not permit to be assigned to another capital case. Indeed, at the time he left, he was assigned no capital case.

The four capital cases currently pending in the office are in excellent hands. It is sufficient to repeat here the statement of the Honorable Timothy A. Reardon, Presiding Judge of the San Francisco Superior Court's Master Calendar, who rebutted the Grand Jury's assertions about our representation of capital cases by the Public Defender:

> "In every capital case involving the public defender office, the attorneys handling the case have been, one, very experienced and, two, very competently representing the client." (S.F. Recorder, p. 8, May 18, 1989.)

C. It is, therefore, clear that the Grand Jury's statements falsely and unfairly impugned the quality of the office's representation of capital clients. As such, those statements demonstrate reckless disregard for the truth and constitute a slur on the hard working, dedicated lawyers who perform under enormous pressures with outstanding skill, in struggles to save the lives of their clients.

D. The Grand Jury did make a valuable recommendation that the office organize a capital team. Unfortunately, with the small number of capital cases and the great amount of time necessary for each case's preparation, that does not appear to be possible given the City's budget constraints.

X. General Management Issues

A. Hours

(1) The Grand Jury's concern about the precise periods of times during which attorneys are physically present in the office is trivial, and demonstrates a total lack of understanding about the operation of a law office of trial lawyers. The Public Defender's Office is not a cheese factory, where the work can be accommodated to the punching of a timeclock.

An office of trial lawyers, be it public or private, consists of people who work in excess of 40 hours a week. They work nights and weekends. They work nights and weekends, at the jails in San Francisco and San Bruno, and on the streets talking to witnesses and visiting crime scenes. Indeed, the Grand Jury does recognize that this is the regimen which public defenders follow.

(2) The duty of the Public Defender is to certify that his employees spend 40 hours a week working at their jobs. Since they routinely work much more than the required 40 hours, this duty has been faithfully met. In certifying this amount of time the Public Defender has the discretion to allow reasonable deviations from the 8:00 to 5:00 regimen.

XI. Organization

This section of the report (p. 3) lacks a discernible common theme. Any response can, therefore, only be on an item-by-item basis.

A. The report states: "With the exception of the Administrative Unit, all units in the Office are managed by a Head Attorney (all of whom earn in excess of $80,000) regardless of the unit's size or function." In addition, Recommendation

No. 2 of the report is: "The Public Defender should determine the cost effectiveness and need for the use of Head Attorneys as supervisors of each unit."

(1) The reasons for particular positions being held by a Head Attorney vary. Civil Service Commission specifications allow a Head Attorney to be a supervisor, an attorney handling complex litigation, or some special responsibility (see Civil Service Specifications for Head Attorney, Appendix C). These types of duty, and not simply the numbers of persons supervised, determine the appropriateness of a position being classified as a Head Attorney. In each instance, the utilization of that class was approved by the Commission and the Board of Supervisors.**

(2) There are acknowledged duties each Head Attorney must fulfill. Each Head Attorney in the office reports directly to the Chief Attorney. Each Head Attorney has a role in the decision-making and responsibility for it. Each Head Attorney carries out functions which are unique to the particular assignment.

(3) The Public Defender's office has the lowest ratio of head attorneys per lawyer of any of San Francisco's public law offices. The Grand Jury should compare, as the Civil Service Commission has compared quite favorably, our office in its supervisorial cost-effectiveness to the City Attorney's Office and to the District Attorney's Office.

B. The report states: "The Chief Attorney determines assignments to the units. Testimony indicates that assignments are sometimes arbitrary and may be used for disciplinary reasons."

This is not true.

Assignments are not arbitrary. They are based on the need to match the responsibilities of the attorneys to their abilities and the assignments are made as a result of consultation between the Chief Attorney and the supervisors. An attorney who is not ready to advance from representing clients

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**This information was discussed in my letter to the Grand Jury, dated December 9, 1988.

in misdemeanors to felony representation has no business being in the felony unit. The professional growth of each person is measured when an assignment is determined, and there are many factors which determine that measurement. But punishment of someone is not a factor. No current assignment has been made for punitive reasons.

C. The report states: "Unit managers do not always participate in or supervise the work in their respective areas."

This is not true.

The supervisors, on a daily basis, directly coordinate lawyers, train lawyers, evaluate lawyers and personally participate in the representation of clients.

D. The report states: "Less experienced attorneys need the support and guidance of supervisors and peers. Group discussions within the office have been discouraged."

This assertion has no basis in fact.

Had the Grand Jury requested attendance at Thursday afternoon sessions of the misdemeanor unit, regular meetings of the felony unit, or the frequent and intensive case conferences for serious felony cases, a more accurate sense of the dynamics and achievements at the Public Defender's Office could have been obtained.

XII. Investigation

A. When Head Attorney Gordon Armstrong, the Investigative Unit's supervisor, retired in April of this year, serious consideration was given to the idea of having an investigator supervise that unit. After consultation with supervisors, staff attorneys and investigators an overwhelming consensus was reached: that an attorney should head the unit. The uniform belief was that an attorney would continue to provide the best liaison between the investigators and lawyers and an attorney could best evaluate the investigation requests and assign their appropriate priority.

As a point of information, the Los Angeles County's Public Defender is now considering shifting over to the San Francisco model and, in all probability, have a lawyer supervise their investigative unit.

B. The report states: "There is no appeal to [sic] his [the Head Attorney in charge of Investigations] decisions, even though inadequate investigation may adversely impact an attorney's case in court."

This is not true.

Appeals can be, and have been, made by the attorneys from such decisions. The appeals are done through the individual attorney's supervisor. If necessary, the matter can be taken to the Chief Attorney or to the Public Defender for resolution. Problems do arise from time to time as a result of the scarcity of investigators and because the supervisors must prioritize choices. But appeals occur, and they are often successful.

XIII. Research Unit

The issue of access to the brief bank is another example of the report's fixation on minutiae. Even though there is no recorded instance of a problem of access, Ms. Suarez, in deference to the Grand Jury, moved the briefs into the library.

With regard to the rest of that section's reference to the research unit, please see Ms. Suarez and Ms. Asada's comments which are attached, collectively, as Appendix D.

XIV. Criminal Law Specialists

A. On page 7 the report states: "Certain promotions require the California State Bar certification as a Criminal Law Specialist. However, these positions have been known to be filled by attorneys who did not have the certification at the time of the appointment. The Public Defender's discretion is often exercised arbitrarily."

This is not true.

B. The only persons who are principal attorneys and who are not certified as criminal law specialists are three attorneys in the mental health unit and one attorney in the juvenile unit. The in-house requirement has been waived for those lawyers because Criminal Law Specialization is not germane to their duties.

C. It is disappointing that the Grand Jury did not explain in the report that San Francisco is the only Public Defender office in the country which requires any of its lawyers to be certified specialists in criminal law. This requirement was put into effect five years ago voluntarily and has served well.

Indeed, it is here that the Grand Jury might have demonstrated some modicum of fairness had it acknowledged that of the 25 persons of the rank of principal attorney or above, 21 are certified criminal law specialists. It would have also acknowledged the enormous measure of status and talent which is reflected by the fact that there are 25, out of 66, attorneys in the San Francisco Public Defender's Office who are certified as Criminal Law Specialists by the State Bar of California. Nowhere else in the nation is this ratio even closely approached.

Summary

Section 930 of the Penal Code states that comments by a Grand Jury upon persons and officials not indicted are not privileged. In enacting this section, the Legislature required that grand juries operate on the basis of a reasonable reliance on facts and that comments by them have a basis of accuracy. This Grand Jury, in its Interim Report, did not perform its fact-finding function within this standard. Assertions were not checked. Knowledgeable parties were not sought out. Primary sources were not used. It is not surprising, then, that the Interim Report is pervaded with error.

In charging grand juries with the power to investigate the operations of departments of government (Section 925 P.C.), the Legislature also presupposed that grand juries would report to the public on the value of the service of those departments. It would seem that as a primary goal, this Grand Jury would have undertaken the task of determining whether the Public Defender was providing competent representation. That seems every bit as important as the issues of keys to a computer room, the scrutiny of the sign sheet, or the detail in a job advertisement.

A failure to provide reliable findings and a failure to assess the ultimate product of the office mean, as the Grand Jury has indicated, that another report is necessary.

Yours very truly,

Jeff Brown
Public Defender

JB:cps

encs.

DECLARATION OF ROBIN B. LEVINE

I, ROBIN B. LEVINE, declare that I am a Deputy Public Defender assigned to supervision of the Misdemeanor Unit of the Public Defender's Office of San Francisco.

That, during the current fiscal year, the following seminars have been conducted by and in this office:

MISDEMEANOR UNIT SEMINARS

7/22/88	Closing Argument	Speaker: Michael Burt, Deputy Public Defender
1/19/89	Toxicological Aspects of V.C. 23152 and H&S 11550 Cases	Speaker: Dr. Michael Slade Office of the Medical Examiner/Coroner
2/2/89	Alternative Sentencing	Speaker: Michael Groom, County Parole, Sheriff's Department
2/23/89	Jail Psychiatric Services	Speaker: Chris West, Jail Psychiatric Services
3/16/89	Misdemeanor Appellate Practice	Speaker: Grace Suarez, Deputy Public Defender (Head Attorney, Research Unit)
3/23/89	Voir Dire	Speaker: Ron Albers, Deputy Public Defender (Supervisor, Misd. Div.)
3/27/89	Speedy Trial	Speaker: Grace Suarez, Deputy Public Defender
4/20/89	Pre-Trial Diversion	Speakers: Michael Shaw, Pre-Trial Diversion; Victor Lee, Substance Abuse Referral Unit
5/3/89	Mental Health Aspects of Misdemeanor Practice and How L.P.S. Works	Speaker: Estella Dooley, Deputy Public Defender (Head Attorney, Mental Health Division)
5/18/89	"Standing" Aspects of Motions to Suppress	Speaker: Grace Suarez, Deputy Public Defender

OFFICE-WIDE SEMINARS AND TRAINING

9/16/88	Consequences of Criminal Charges and J.R.A.D.'s from the Perspective of the I.N.S.	Speaker: Steven Gruel, I.N.S. Attorney
9/22/88	AIDS Law and Confidentiality	Speakers: Jeff Brown, Public Defender; Dr. Elizabeth Kantor, Jail Medical Services; Rowlee Greenberg, Forensic AIDS Services; Ron Albers, Deputy Public Defender
11/29/88	Prior Consistent Statements	Speaker: Jeff Brown, Public Defender
	Prior Inconsistent Statements	Speaker: Peter Keane, Chief Attorney, Public Defender's Office
12/13/88	Lunchtime Brown Bag Video Subject: D.U.I. Defense (Video of C.P.D.A. Seminar of 12/19/87)	Coordinator: Grace Suarez, Deputy Public Defender
12/19/88	Westlaw Training	Coordinator: Grace Suarez, Deputy Public Defender
1/23/89	Selected 1989 Statutes	Coordinator: Grace Suarez, Deputy Public Defender
3/21/89	Computer Training	Coordinator: Grace Suarez, Deputy Public Defender
3/24/89	Computer Training	Coordinator: Grace Suarez, Deputy Public Defender
3/24/89	Forfeitures and Confiscation	Speaker: Jeff Brown, Public Defender
4/10/89	Computer Training	Coordinator: Grace Suarez, Deputy Public Defender

5/25/89	Drunk Driving; Evidence	Speakers: Ed Kuwatch; Susan Kaplan Coordinator: Grace Suarez

It should be noted that Criminal Specialization Accreditation was obtained for several of the above-listed seminars from the Board of Legal Specialization of the State Bar of California by Grace Suarez, Head Attorney of our Research and Appellate Division.

In addition to the "in-house" seminars referred to above, scholarships were obtained by Jeff Brown, Public Defender, for the junior deputies of our office to the following seminars presented by the California Public Defenders Association:

7/13-16/88	Trial Skills Institute San Diego, California
10/1/88	Evidence San Diego, California
10/29/88	Basic Trial Practice San Francisco, California
12/19/88	D.U.I. Seminar San Francisco, California
3/18/89	Criminal Defense Advocacy Sacramento, California
4/1/89	Basic Felony Practice Santa Barbara, California
5/27/89	A Search and Seizure Workshop San Francisco, California

In the past fiscal year we have also re-written, largely through the efforts of Ron Albers, my co-supervisor of the Misdemeanor Division, with the assistance of Grace Suarez and myself, our "Misdemeanor Training Manual". Each Misdemeanor Deputy is presented with a copy of the manual. The manual is also read by our undergraduate and law student interns, as well as by private attorneys on loan to our office for ninety-day periods (commonly known as our "loaners"). It should be noted that our "loaners" and interns attend our "in-house" seminars as well.

I declare, under penalty of perjury, that the foregoing is true and correct except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Executed at San Francisco, California on May 26, 1989.

ROBIN B. LEVINE
Deputy Public Defender

APPENDIX B

Public Defender Felony Caseload:

Memorandum to Peter Goldstein

From Jeff Brown

April 1, 1989

Introduction

This memo will address your concerns about the size and manageability of the caseload of the Public Defender. In this order I will offer these conclusions: (1) the caseload is at a high level, relative to other years; (2) the staff isnow working with caseloads that exceed acceptable standards in the legal community; (3) the caseload is complex in nature and therefore not amenable to rapid handling; and (4) horizontal representation is not a panacea. In reading this memo, you should be mindful that the service we provide--the representation of the indigent accused--is a responsibility of the highest constitutional magnitude. That responsibility includes the requirement that the representation be done well, that attorneys diligently represent their clients, that investigate the facts and the law in each case, and they exhaust every avenue of defense on behalf of the client. Realizing that, I think you will begin to grasp the enormity of our work.

I. The Caseload Is Very High

The overall caseload of the office has always been high. In every year of my tenure roughly 20,000 plus clients are represented. In recent years there has been growht in two areas--felonies and dependency cases. Unfortunately, given budget cuts last year, our dependency representation had to be discontinued. Felony representation, however, remains the biggest part of our job, and there the number of cases increased in 1987 and remained at a very high level.[1] Figure A is taken from the Judicial Council reports by the Municipal Courts for ten years. It indicates the number of felony complaints filed:

Figure A - Municipal Court Felons Accused

1978-79	6,038
1979-80	6,629
1980-81	6,415
1981-82	7,708
1982-83	6,964
1983-84	5,982
1984-85	6,550
1985-86	7,311
1986-87	7,166
1987-88	8,806
1988-89	7,758 (projected 7-mo. basis)

[1] I have not discussed the work of the juvenile and misdemeanor units. The statistical indications are that there will roughly be the same as last year.

Figure B is Superior Court new filings since 1983-4, taken from the data the Superior Court provides. It includes informations and certifications.

Figure B - Superior Court New Filings

1983-84	1984-85	1985-86	1986-87	1987-88	1988-89
3,267	3,148	3,491	2,840	4,412	5,170 (Projected 8-mo. basis)

Our own data parallel those provided by the courts.

Figure C - Public Defender - New Felonies

1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89
4,152	5,175	4,256	4,649	4,977	5,660	5,598 (Projected on 8-month basis)

Figure D - Public Defender Dispositions - Superior

1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89
1,932	1,528	1,338	1,543	1,676	2,115	4,254 (Projected on 8-month basis)

Figure D includes all dispositions-sentences in new filings and motions to revoke and dismissals.

Figure E - Average Number of Trial Cases Pending

1983	1984	1985	1986	1987	1988	1989
174	195	195	210	177	208	207

Figure E represents the average number of trial cases pending at on a given day during the year. Each day a list of the cases pending trial is available. Usually, it is measured on a weekly basis. Appendix 2 is such a report for March 29, 1989. What is instructive about Figure E is the consistency of high trial calendars from 1988 to the present. A closer examination of the trial cases pending figure, which is not shown in Figure E

but is available,[2] is that this statistical plateau has continued non-stop since October, 1987.

The high level of felony caseloads for the courts and the public defender is attributable to two factors:

-- The crack cocaine cases, and the cases of violent behavior associated with crack use, continue to flood the courts.

-- The District Attorney filing an abnormally high number of motions to revoke probation in the Superior Court, adding as much as 150 cases per month more than in the months in previous years.[3] The District Attorney appears to be doing this as a substitution for filing new cases in the Municipal Court against arrestees on probation. In this way, their Municipal Court caseload is kept within manageable levels. For them, motions to revoke are economical form of prosecution--there is no jury trial; the standard of proof is less than in a trial; and the rules of evidence are less strict. For us, motions to revoke represent a new headache. Each client faces state prison and, therefore, the case requires interviews, investigation, and argumentation. To make matters worse, motions to revoke are kept on a fast track--usually 30 days from the initial appearance.

II. The Staff Is Working With A Maximum Caseload

To increase the caseloads of public defender attorneys through staff reductions would disastrously affect the quality of representation. Attorneys would be forced to practice in a fashion not acceptable by the law of this state or nation and not countenanced by the standards of the legal profession.

At this time, felony deputy public defenders are handling between 240-260 cases per year. The National Legal Aid and Defenders Association standards indicate that public defenders should handle no more than 150 felony cases per year. Appendix 2 is a copy of the National Legal Aid and Defenders Caseload Questionnaire Survey. The clear consensus of respondents indicated that no more than 200 felony cases per year should be assigned to an attorney. Not only are we exceeding this clear consensus, but we are also exceeding a vast majority of

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[2] See Public Defender Annual Report 1987-88, p. 54.

[3] See Austin, J. "San Francisco Jail Revised Projections," p. 6, Table 2, p. 7, Table 3, March, 1988 (enclosed).

jurisdictions in the actual number of cases handled by public defender offices.

Should this caseload burden be increased, the probability of reversals for incompetence of counsel and of lawsuits for malpractice will increase. This is because there is no way that attorneys will be able to interview clients and witnesses, research issues of law, prepare pleadings, and be ready for trial in all cases. This is also because that with public knowledge of staff cuts, the public defender will become a big target for these kinds of legal attacks.

Nor will I be able to countenace enlarged caseloads. To do so would violate legal canons. Faced with these cuts, I would reluctantly be forced to invoke Standard I-4.3 of the American Bar Association Standards On Criminal Law:

> Neither defender organizations or assigned counsel should accept workloads that by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Whenever defender organizations or assigned counsel determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organizations or assigned counsel must take such steps as may be appropriate to reduce their pending or projected workloads.

III. The Caseload Is Complex

The abundance of crack cases should not leave the impression that our trial courts work consists primarily of simple dope sales. There are, to be sure, enough of those. However, an examination of our Superior Court caseload like the one shown in Appendix 3 indicates that most of the cases awaiting involve multi-count offenses. As you can see in Appendix 3, the trial case calendar for March 29, you will note complex sex cases, murders, drug offenses involving several counts, robberies, serial burglaries. There are not cases that can be easily "cop-ed out" in a rapid turn-around time. Rather, they require thorough investigation and involve complicated sentencing possibilities. This is the critical mass. The cases that could easily be disposed of, by and large, do not reach the Superior Court. And it is this complex caseload that remains high, as I previously indicated.

SAN FRANCISCO CIVIL SERVICE COMMISSION

CLASS TITLE: HEAD ATTORNEY (CIVIL)(CRIMINAL) CODE: 8182

CHARACTERISTICS OF THE CLASS:

Under general administrative direction, performs the most difficult and responsible professional legal work in the City or District Attorney's Office in connection with the prosecution or defense of involved and important civil and criminal cases; assigns, supervises and reviews the work of subordinate attorneys; and performs related duties as required.

Requires major responsibility for: interpreting, carrying out and assisting in the development of methods and procedures relative to the legal processes of the office in which assigned; making regular responsible contacts with other legal personnel, court officials, law enforcement agencies and outside organizations relative to assigned legal matters; preparing and reviewing extremely complex and important legal instruments and documents in connection with assigned cases.

EXAMPLES OF DUTIES:

CIVIL:

1. Prepares for trial and tries the most involved and important contract, personal injury, accident and damage cases and other litigation for and against the city; assigns, supervises and reviews the work of subordinate attorneys handling similar cases of lesser scope and responsibility; assigns and supervises the work of investigators in preparing for and trying injury and damage cases; advises subordinate personnel on problems of trial tactics; provides legal advice and opinions on the powers, duties and responsibilities, legal methods and procedures, the conduct of quasi-judicial hearings and the reception of evidence therein for the Board of Supervisors.

2. Prepares, reviews and approves proposed contracts, charter amendments, ordinances and resolutions for form and content; writes legal opinions covering a wide variety of legal problems; and reviews and approves legal opinions prepared by subordinate personnel; serves as legal adviser to the Board of Supervisors and in matters concerning state legislation; attends Board meetings and acts as legislative advocate to the State Legislature; attends legislative sessions as required; presents policy on bills affecting the interests of the City and County.

3. Prepares and tries condemnation actions in connection with the acquisition of privately owned lands for municipal proposals; negotiates settlements of any such condemnations prior to and subsequent to legal action; prepares briefs and argues condemnation matters before the District Court of Appeals and the Supreme Court when necessary.

CRIMINAL:

1. Prepares and prosecutes the most involved and important criminal cases in the Superior Court; advises, supervises and reviews the work of subordinate attorneys and investigators in connection with the prosecution of criminal cases; supervises and participates in the gathering and presentation of evidence to the Grand Jury relative to possible issuance of indictments by the Grand Jury.

2. Advises, supervises and reviews the work of subordinate attorneys in connection with the presentation of felony preliminary hearings and trials of all misdemeanor cases in the Municipal Court; is responsible for the issuance of all citations, both felony and misdemeanor; assigns and hears all complaints and citation matters; disposes of suspicion-of-felony arrests.

MINIMUM QUALIFICATIONS:

Training and Experience: Requires completion of an accredited law school, supplemented by at least ten years of progressively responsible experience as a practicing attorney, with emphasis on jury trial and courtroom work, including at least two years of responsible supervisory experience; or an equivalent combination of training and experience.

Knowledge, Abilities and Skills: Requires comprehensive knowledge of: state and federal and municipal codes, laws and ordinances, particularly as applied to civil and criminal laws; legal processes and techniques of courtroom and jury trial work; administrative techniques and methods, particularly as they relate to the activities of the City or District Attorney's Office.
Requires unusual ability to: speak and write effectively in the preparation and presentation of assigned legal cases; exercise considerable judgment and tact in dealing with court officials, juries, law enforcement agencies and other governmental agencies in connection with legal assignments.

License: Requires membership in the State Bar Association and license to practice in all state courts.

PROMOTIVE LINES:

No normal line of promotion - positions exempt from examination

AMENDED: 12/1/66

Research Unit
Office of the Public Defender
City and County of San Francisco

MEMORANDUM

TO: Jeff Brown, Peter Keane
FROM: Grace Suarez
DATE: May 18, 1989

RE: Grand Jury Report - Research Unit

Just to re-cap some of the points about the Research Unit portions of the report, the following are errors and misstatements in the Grand Jury report:

The report states that I supervise 0 deputies. That is not so. I supervise one deputy and one paralegal.

The report assumes that all "supervising" head attorneys do nothing but supervise, and conclude therefore that some who supervise more people are automatically working harder than others who supervise few. This conclusion ignores the fact that some Head Attorneys, like myself, carry a caseload. This fiscal year (July - May) I handled forty-one motions, writs and appeals, most of them fairly complicated issues requiring extensive work.

For instance, I am currently involved in challenging the constitutionality of Proposition 96 (the mandatory AIDS testing initiative). This case has consumed many many hours and will continue to do so for quite a time. In addition, I co-counseled with Michael Burt in the Willie Bolds case, a death penalty case (which did not go to trial, but settled for life w/o parole). So far this year, I have won three cases in the Court of Appeal which have resulted in published opinions, Johnson v. Superior Court (1989) 208 Cal.App.3d 1093, Bruner v. Municipal Court (1989) 207 Cal.App.3d 1193, and Simmons v. Superior Court (1988) 203 CA3d 71.

The report ignores completely the major part of the Research Unit's work. It states (on page 4) that the Unit maintains the library, collects legal writings, prepares training materials and coordinates the supervision of law students and collects jury data.

The report makes no mention of the fact that we research and write motions, writs, appeals, memoranda, and jury instructions for the attorneys. This fiscal year the three of us prepared 156 such documents. This does not count the several daily phone calls and consultations

about specific legal problems, or the oral research requests. It also does not count the many memos sent to all attorneys on recent legal developments, or the monthly newsletter.

The report also totally fails to mention the training that the Unit conducts, which includes not only regular training sessions for misdemeanor deputies, but also State Bar-approved training sessions open to all criminal practitioners at no charge.

The report states that there "were no law students to supervise". The law students are handled by Robin Levine, and any trial attorney who wishes to have one assigned has only to ask. As you know, we made extensive efforts to recruit law students to do just research work, and encountered no interest at all from the law schools or the students.

In short, it is clear that the recommendations made by the Grand Jury for the improvement of the Research Unit are based upon totally inadequate investigation and a complete misunderstanding of the role of the Research Unit.

Response to Individual Recommendations:

Recommendation No. 6 (access to the Brief Bank):

If in fact there is a need to use the brief bank after hours (which no one has ever requested), then the answer is to buy a file cabinet and move the files out to the Library. The answer is not to make 66 keys to the computer room and give people unlimited access to $14,000 worth of delicate computer equipment.

Recommendation No. 7 (the exhibits):

The "storage of exhibits" suggestion is ridiculous. To the extent that exhibits can be re-used (such as large-scale maps), they are stored and available to attorneys. The few other "exhibits" that we use, such as diagrams of crime scenes, are certainly not re-usable.

Recommendation No. 8 (law student program):

This is already in effect, and always has been. It is run by a trial deputy supervisor, since the assignments of law students are made to trial deputies. This is an unnecessary recommendation.

MEMO

May 18, 1989

TO: Jeff Brown

FROM: Kathy Asada

RE: The Civil Grand Jury Interim Report

I found the Interim Report full of misconceptions and inaccuracies, particularly with respect to the Research Unit. First, under the "Operations and Management" "Organization" section, I appeared as "0", under the number of deputies assigned to the unit (p.3). Later, Muriel and I are described as "two assistants" (p. 4). Muriel is a trained paralegal, and as you know I have been in the office a number of years and am a certified criminal law specialist.

The report totally omits our major functions: preparing and arguing writs and appeals in misdemeanor cases; preparing writs and occasional appeals in felony cases (although they are usually handled by the State Public Defender or California Appellate Project, we just had a case where we were respondents in a case appealed by the prosecution); preparing motions to suppress, to dismiss, to set aside informations, to sever, et. al. in felony cases; being available to answer quick questions and assisting attorneys doing their legal research in our library or through WESTLAW.

I also disagree with the "several witnesses [who] testified that if the Head of Research was not in the office there was no access to needed materials." The Research Unit is open during the day. If the needed materials consist of the brief bank, it is my understanding that the brief bank will be moved into the library. The brief bank has been locked because there is a constant loss of documents, diminishing its value as a resource. The only other "materials" that are locked in the research unit are Grace's personal copies of the Penal Code and the Welfare and Institutions Code. Office copies of the codes are available in the library.

The reason the Research Unit is locked and access is limited on the weekends and in the evenings, is because of the expensive computer equipment located in that room. The security in our building is limited and it would be impossible to replace the equipment if it is stolen. The equipment in that room includes four computers, a laser printer, an optical scanner, a television with a built in video cassette recorder (for viewing training tapes), a typewriter and another printer. A computer and printer are available for attorneys use in the evenings and on the weekends, on the third floor. Since all research files will be moved into the library, ensuring that the staff has full access to them, keys to the research unit do not need to be provided to all

attorneys. (Moreover, the report recommends that the office hours be enforced, therefore there should not be any need for access to the materials on the weekends or evenings.)

Recommendation #8: "The Public Defender should establish and maintain a formal program to recruit and utilize law clerks, students and extern/interns to relieve the individual attorneys of this personnel function." At one time Grace and I looked into the recruitment of law students for the research unit. We found that other public defender offices paid interns who did legal research and writing. We also found that those who wanted to volunteer their services were not interested in doing research, they wanted to work with trial attorneys. It is my understanding that Robin Levine, one of the misdemeanor head attorneys, is in charge of the placement of law students interested in placement with trial attorneys.

There are occasional volunteers who express an interest in research and are welcomed. At the present time, there is one such volunteer.

Recommendation #2: "The Public Defender should determine the cost effectiveness and need for the use of Head Attorneys as supervisors of each unit." As far as the Research Unit is concerned, I believe that there is a clear need for a Head Attorney with broad criminal law experience to supervise the unit. Grace is well known in the criminal law community. When Prop 8 was passed, she became a columnist for the California Attorneys for Criminal Justice Forum Magazine. She is one of the authors of the California Criminal Law: Procedure and Practice, California Continuing Education of the Bar, and rewrote 15 chapters for the 1988 update. She speaks at California Public Defender Association seminars on a variety of topics and is listed as one of the resource people on their hotline for Pretrial motion and Discovery questions.

A head attorney is also needed to deal with the new questions of law that are constantly arising. Recently, Grace has been active in the Prop 96 AIDs case handled by our office. Grace has challenged other legislation that has denied our clients' constitutional rights. (E.g., People v. Harris (1985) 165 Cal.App.3d 1246.) Grace is responsible for most of the published Supreme Court and Court of Appeal opinions that come out of this office.

In Los Angeles, there is an Appellate Branch, supervised by a Head Attorney and staffed with six attorneys. They publish a newsletter, "Briefly Speaking," that summarizes some of the criminal law cases. Grace produces a regular newsletter that summarizes all of the criminal law cases. A copy is provided to each interested attorney, and the cases are available for searches on the computer. Each year a summary of all of the cases is produced, bound and available in the library.

Grace's computer expertise has helped automate our office and she is a valuable resource for the growing number of attorneys who have purchased their own computers. The computers have allowed the research unit to quickly produce legal documents. Last week while Grace was on vacation, I received a request for a writ of prohibition from one of the attorneys on May 10, 1989. The case was set for trial on May 15, 1989. I filed the writ on May 11, 1989 and the stay was granted on May 12, 1989. This would not have been possible without the computer training I have received while working with Grace.

If the goal of our office is to provide the best legal representation possible to our clients, I believe that the Research Unit plays a key role in achieving that goal. The responsibilities stated in the Interim Report ("the maintenance of the library, the collection of legal writings, the maintenance and expansion of the brief bank, the preparation and distribution of training materials for attorney personnel and the coordination and technical supervision of the volunteer law students and the collection of jury data.") are only a very small portion of what the unit does.

ADDENDUM

Point by Point Refutation of False and Misleading Statements Mady by the Grand Jury in Their Interim Report

1. Hours

"The Public Defender is often absent from the office to promote outside interest in his office and to propose and speak on pending legislation affecting his duties." (p. 2.)

Fact: Although comment is not meant to be critical, it is nevertheless wrong. I am in the office in excess of 90% of the day, from 8:15 a.m. to, typically, 6:00 p.m. Despite the fact I am allotted a month's vacation, I have taken no more than two weeks in any recent year.

2. Assignments

"Testimony indicates that assignments are sometimes arbitrary and may be used for disciplinary reasons." (p. 3.)

Fact: Assignments are made on the ability of an individual to handle work. An attorney who has not demonstrated sufficient professional growth will not be given a more demanding assignment. An attorney who indicates inability to handle a present assignment will be given a less demanding assignment. That is not discipline or arbitrariness; it is responsible management.

3. Supervision

"Unit managers do not always participate in or supervise the work in their respective areas." (p. 3.)

Fact: Unit managers periodically carry cases, usually murder cases, and constantly supervise on a day-to-day basis. Since the Grand Jury did not speak to any supervisors of trial deputies and did not conduct an on-site inspection, the statement is uninformed.

4. <u>Group Discussions</u>

"Group discussions within the office have been discouraged." (p. 3.)

<u>Fact</u>: There are consistent group meetings within units and among deputies as a whole. There is no basis in fact for the statement that I, or anyone else, has discouraged group discussions. The statement is made with reckless disregard of the truth.

5. <u>Investigation</u>

"The Head Attorney [in charge of the investigative section] uses his own discretion in evaluating the requests . . . . There is no appeal to [sic] his decisions . . . ." (p. 4.)

<u>Fact</u>: The appeal process is open. Attorneys can go to their supervisors, the Chief Attorney, or to the Public Defender. The Grand Jury was told this.

6. <u>Research</u>

"It is the responsibility of the Research Unit to supervise volunteer law students . . . ." (p. 5.)

<u>Fact</u>: It is not the duty of the Research Unit to supervise law students other than those who wish to work in that unit. The coordination for law students is done by a misdemeanor supervisor. Most law students work in tandem with attorneys in the office who are directly responsible for their supervision.

7. <u>Research - Law Students</u>

"The office has no program to recruit law students or law clerks." (p. 5.)

<u>Fact</u>: Peter Keane and I have spoken at all the Bay Area law schools, attempting to recruit law students. We have met with the deans of law schools in the past year, and I have spoken this last year at Hastings and U.S.F. for that purpose.

8. Hiring

"The composition of the [hiring] committee depends on who is in the office at the time; membership is indeterminate and unorganized. One interviewee may face a few attorneys in the first interview, another may face many." (p. 6.)

Fact: The hiring committee consists of the supervisors of the office. If there are absences, it is because of the demands of supervision. However, in all interviews, there are several supervisors present.

9. Promotions

"Within the Public Defender's Office, long-term professional employees who have expressed interest in promotion testified that such promotions are often awarded to less experienced attorneys." (p. 7.)

Fact: Promotions are awarded on the basis of ability to do the assignment, not time-in-service. Time-in-service is taken into account among equally qualified candidates. However, no promotion has been awarded to an attorney that does not have the minimum years in service recommended by Civil Service.

10. Promotions

"Certain promotions require the California State Bar certifications as a Criminal Law Specialist. However, these promotions have been known to be filled by attorneys who did not have the certification at the time of the appointment. The Public Defender's discretion is often exercised arbitrarily." (p. 7.)

Fact: There are no City rules requiring State Bar certification. It is, rather, an in-house rule that applies to criminal lawyers of the rank of principal attorney or above. The requirement does not apply to attorneys practicing in mental health and juvenile specialties, because the examination for certification is not germane to their duties.

Of 24 attorneys of the rank of principal attorney or above, 21 are Criminal Law Specialists--the highest proportion in the state.

Two principal attorneys are working in the mental health section, who are not criminal law specialists, and they were principal attorneys before the rule was made in 1983. A head trial attorney, Estella Dooley, has been in that capacity since 1976 and is a non-specialist. One other non-specialist, principal attorney Patricia Lee, does juvenile work exclusively and she has been a principal since 1982. Since three of the four attorneys are people of color, there is a strong suggestion of racism in the origin of the complaint.

To say the promotions that have been made to the rank of principal attorney were exercised arbitrarily (without a consistent rule) is a falsehood.

11. <u>Terminations</u>

". . . the Grand Jury has found that the stated termination policies are not observed. No one interviewed was aware of any consistent termination policy . . . ." (p. 9.)

<u>Fact</u>: The Grand Jury never inquired of the Public Defender or the Chief Attorney about any single reason for a termination. The Grand Jury is, therefore, in no position to judge the consistency of any particular termination. However, I can say that in all situations, malfeasance, serious misfeasance, or lack of competence was the basis of a termination.

Because terminations are personnel matters, they cannot be discussed publicly. Therefore, lack of knowledge about them is to be expected.

12. <u>Terminations</u>

Because of terminations, "clients have to adjust to a new attorney who is unfamiliar with the specific case. This adds

to courtroom delays and potentially flawed representation of the clients involved." (p. 9.)

Fact: In most situations, the client representation improves because the case is put in the hands of a more competent counsel.

13. **Training**

"Inexperienced attorneys and attorneys new to San Francisco first appear in court unprepared for the pace of San Francisco Municipal Court calendars. Supervision is minimal, and at times lacking. There is no consistent training program.

"Although there is office policy that states that there are weekly or biweekly training sessions, both the Public Defender and the Chief Attorney have stated that job pressures preclude such training." (pp. 9-10.)

Fact: There is never enough training but there is supervision, evaluation, and training of incoming attorneys. Supervisors go to court with attorneys and monitor, in an unobtrusive way, performance and provide evaluations after six months of the starting date. New attorneys are paired with more experienced attorneys.

As to formal training, since January 1989 there have been nine bi-weekly training sessions for misdemeanor attorneys by supervisors. There have been five office-wide sessions and another four programs for misdemeanor attorneys provided by the California Public Defenders Association (C.P.D.A.), for which the Public Defender obtained scholarships for misdemeanor deputies. Additionally, each year a basic trial skills training institute is presented by C.P.D.A. and is made available to misdemeanor staff.

The Grand Jury is wrong in stating the Public Defender and the Chief Attorney said that bi-weekly sessions were "precluded." We said that the workload made them more difficult for staff to attend. Nevertheless, we have been able to hold (State Bar) accredited educational sessions.

14. Caseloads

"Statistics from the Public Defender's 1987-1988 Annual Report show that total caseloads have not changed significantly over the last nine years. The total number of cases reported only increased from 22,825 to 22,975. Felony cases went from 5,329 to 5,739. Other areas declined." (p. 10.)

Fact: The Grand Jury's use of statistics is misleading. The Grand Jury does

not show the public the difference in the caseloads over the nine-year period. It jumps from 1978-79 to 1987-88.

First, the statistical information in 1978-79 was extremely unreliable. Most of it was counted, before the present Public Defender took office, manually and in a haphazard manner.

Second, the Grand Jury had available data from the Public Defender and the court which indicated a steady increase in the number of felony, juvenile, and mental health cases during the years between 1982-83 and 1988-89. All indices pointed to a growth in the most complex area -- felony cases -- in 1987-88. The Grand Jury choose not to discuss its concerns about statistics with the Public Defender.

15. Mental Health

"If, as reported, only three attorneys were assigned to 5,082 mental health cases in 1987-88, the situation is not only unmanageable, but intolerable." (p. 11.)

Fact: The Grand Jury does not tell you, because it did not bother to find out, that because of staff reductions in 1988, the number of mental health cases the office accepted declined. In 1987-88 there were five, then four, attorneys doing mental health cases. In 1988-89 there were three. As a consequence, the Public Defender rejected over 2,000 cases.

The Grand Jury does not say from what areas the Public Defender might draw its attorneys for mental health cases. The misdemeanor caseload declined but each attorney is handling over 533 cases per year. (The maximum standard set by the National Commission on Defense Service is 400.) Felony attorneys are handling over 250 (the standard is 100-150). Mental health cases involve a different

degree of involvement than criminal cases and some of the load is taken on by two professional mental health investigators. Unfortunately, the Grand Jury did not speak with the mental health attorneys to gain an informed view.

16. Caseloads

"The caseload in general varies according to the courtroom where assignments are made. Supervisory personnel often take no role in adjusting differentials in caseloads and seldom appear in Municipal Court to help with these discrepancies. This situation seemed to exist in Superior Court as well." (p. 11.)

Fact: Supervisors are in their respective courts on a daily basis. In fact, the felony supervisors have been assigned to the Master Calendar court as the court deputy since 1987.

Caseloads do reflect courtroom activity; and as court departments vary, so will the caseload. However, the distribution among felony deputies is not wide. The standard deviation is 5.5% (less than three cases).

The supervisors adjust caseloads by assigning serious cases to attorneys who, because of lighter caseloads, can take on additional cases. Logs are kept for that purpose. The Grand Jury apparently was unaware of the distribution system.

17. Turnover

"The significant turnover of attorneys . . . has taken a toll particularly of attorneys with experience in capital cases. The Grand Jury has been told that this turnover has affected the capability of the Office to adequately represent defendants in capital cases." (p. 11.)

Fact: Turnover has not affected the ability to represent capital cases. There were four attorneys who left in 1987 and 1988 with capital experience. Two of them had to be removed from their

capital cases because of inadequate preparation. Another had been a junior counsel in a case which was at a preliminary stage when he left the office. The fourth was a person who retired in 1988 who had indicated in 1987 that his health did not permit him to represent capital defendants.

18. Turnover

"Approximately thirty attorney positions became vacant during the years 1987 and 1988, a 44% turnover." (p. 6.)

Fact: Twenty nine attorneys left the office in 1987 and 1988 out of a previously authorized staff size of 69 attorneys (42%, not 44% of staff). During the 1988 budget cuts, three slots were eliminated -- they did not become vacant. Thus, the adjusted figure is 36% for two years.

The attorneys leaving had an average experience of 5 2/3 years, consistent with the historic pattern.

Many of the attorneys who left stayed a limited time, and today 66 2/3% of those on staff in December, 1986 are on staff today.

This year the projected turnover (based on the first five months) will be 12%.

CORRESPONDENCE

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EFF BROWN
ublic Defender

PETER G. KEANE
Chief Attorney

October 4, 1988

Mrs. Mary E. Wilson
121 Commonwealth Avenue
San Francisco, Ca. 94118

Dear Mrs. Wilson:

I have enclosed with this letter eighteen copies of the 1986-1987 Annual Report. The report for FY 1987-1988 is being prepared, and a draft will be finished by November 1st and will be sent to you. My executive assistant, Mrs. Sharon Christensen, is preparing the other data you requested.

I would like to address several matters not completely covered in our meeting, perhaps when you return, you may have some follow-up questions.

Commitment to Justice - A Public Defender's job is to represent poor people who are accused of crimes. Public defenders must give their loyalty to their clients. They must do everything ethical and legal to help the client. To do that, a public defender often goes against public opinion.

I believe that during the eight years since the Grand Jury's last visit, our office's commitment to justice has remained steadfast. This is because the attorneys who work here are hired and retained only if they have a dedication and commitment to the protection of their clients.

To a layperson the above statements may seem to be simple truism. After all, aren't public defenders expected to have this commitment? The answer is that they should, but often don't; and, unfortunately, in its past history this office reflected something less than the ideal of dedication and commitment on the part of its lawyers.

I have worked for nine years to do away with the reputation of Public Defenders as "cop-out artists" and "dump trucks." As with all sincerity, I can say that those efforts have been successful. Today the office has the best reputation in its history for the quality of its lawyering. It is respected by the community, the legal profession, and by the clientele.

Improved Selection Process - The most important thing I do as Public Defender is appoint Deputy Public Defenders. Since the appointment power is at my discretion, the challenge is to pick the right people for the job. For several years, I interviewed applicants on an informal basis and, after consultation made the choice. In recent years, I have formalized the process. When a vacancy occurs, we advertise for more in the legal publications. The applicants are interviewed in a formal setting by a hiring committee of supervisors. The applicant is given a written, hypothetical problem, allowed a few members to study it, and then might give an oral response to the committee. The applicant is then questioned about background, experience, and interests. At the end of the interview, the committee makes a recommendation as to whether the candidate should be interviewed by me and Peter Keane. After that second interview and further consultation, a decision to hire is made about hiring the applicant.

This is what we are looking for in an applicant:

(1) A good trial lawyer.

(2) A demonstrated commitment to public defense work.

(3) Talent, intellect, intellectual and imaginative and a sharp analytical mind.

(4) Someone who will work well with clients, colleagues, adversaries, and judges.

In addition, I want to hire minority and women attorneys so the office reflects and understands the community it serves. With great pride, I can point to the fact that half the attorneys are women and 40% are of minority background.

Of course, no hiring process is fool-proof, but our competitive-selection process has consistently produced excellent Deputy Public Defenders.

Strong Personnel Management - In a large law firm, personnel management is critical to maintaining the quality of legal services. The manager must know the work, be efficient, though, and be able to inspire.

The management components are thoroughly described in the Annual Report. But I want to call attention to more recent emphases in personnel management:

(1) Evaluations - There are annual evaluations on all attorneys and non-attorneys in the office. The evaluations identify areas of skill and outstanding performance. They also indicate areas where improvement is necessary. In the case of attorneys, evaluations are written by the supervisor, reviewed by me, and given to the employee, who can respond to them.

The evaluations are the primary factor used in promotions and in the assignment of serious responsibility.

(2) Training - This office provides training in all professional areas: Attorneys are trained by in-house sessions on recent developments in the law and practice, on a weekly and bi-weekly basis. There are scholarships to attend training sessions of the California Public Defenders Association. Each new class of freshmen attorneys gets intense training in classroom-type sessions.

(3) Certification as Criminal Law Specialists - All criminal attorneys who are in the rank of principal attorney or above must be certified by the State Bar as criminal law specialists. This means the attorney has (a) met the requisite experience level, (b) passed an examination conducted by the State Bar, (c) undergone a background check and peer review; (d) participated in specified hours of continuing legal education. The specialization certificate must be reviewed. Today, 22 of our attorneys are certified, the highest proportion of any office in the State.

(4) Case Consultation - In 1987 I required that in all serious felony cases, the attorneys and supervisors must meet and confer about the progress of their cases. The attorney provides a written memo and there is an exchange of ideas. The case-consultation process grew out of disappointing experiences where some cases had come to the brink of trial with inadequate preparation. The case consultation permits a second opinion about issues, provides a built-in monitor to identify trouble areas, and gives the attorney new approaches.

Concerns

1. Restoration of Dependency Cases

As I indicated, we have had to remove ourselves from Juvenile Court representation of parents in cases of alleged parental neglect or abuse. In these cases, the Department of Social Services seeks to terminate, suspend, or qualify parental contract. The reason we could no longer do this is because three attorneys were cut from FY 88-89 budget.

I do not know precisely how much the appointment of private attorneys is costing the Superior Court, but it must be staggering. The average cost of private counsel per case is $517 compared to $171 for the average Public Defender case. If the 800+ public defender cases are costed out at private counsel rates, the cost is likely to be $413,600 against a theoretical public defender cost of $186,150.

The City should immediately restore the deleted public defender positions so that we can, again, participate in this complex and expensive area.

2. Caseload Standards

I am enclosing both a statistical index and a count of the cases of individual felony lawyers. As you can see, the caseload for individual attorneys over the last few years has been consistently high. As of September 19, the felony caseload was well beyond the capacity of any attorney to manage. The reason for this caseload is the high level of felony arrests.

What I intend to formulate in the next few weeks are realistic, written caseload standards. The Public Defender cannot be expected to absorb every felony indigent case if manpower does not exist to effectively handle those cases adequately. That is contrary to professional ethics. The difficulty is that the City and the courts are hesitant to support an automatic cut-off figure, because it involves costs to their own budgets.

The support of the Grand Jury in this endeavor would be enormously important.

3. Data Processing - For years, Hall of Justice users have complained about the inadequacies of the Electronic Data Processing (EDP) system. The system was put in about 1971, and it was written in a software language called GIMCO, now obsolete. As devised, the system was primarily a calendar-producing system. In recent years, the users have attempted to retrieve special reports and statistical information. The system has design limitations that make program demands infeasible or costly. In addition, because many agencies are allowed to input data, the system suffers from inconsistent policies on classifying information. Finally, the statistical information is wholly unreliable.

   In 1983, we all championed a new design. We wanted a system that could give reliable data, could easily transmit programmed reports, and allow us within our respective shops to have program designs tailored for our special needs. The Mayor's Computer Committee approved our proposal, but the Mayor did not. Redesign has been effectively dead, although there has been improvements and tinkering here and there.

   If we are to do our job better, and if the public is to know what we are doing, a new E.D.P. is essential.

A final word. I have written in a partisan way about the needs and the strengths of this office. More than anything else, I think San Francisco is fortunate to have such committed and competent public servants on the Public Defender's staff. There is a real dedication to excellence here. Thank you for your time and concern.

Yours very truly,

Jeff Brown
Public Defender

JB:cps

encs.

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JEFF BROWN
Public Defender

PETER G. KEANE
Chief Attorney

December 12, 1988

Mrs. Caryl Mezey
Chair, Grand Jury
c/o Superior Court Grand Jury
Executive Officer
Fourth Floor, City Hall
San Francisco, Ca. 94102

Dear Mrs. Mezey:

I want to thank you, your committee, and the entire Grand Jury panel for taking the time to listen to our presentation and our answers to your questions. There are several points which I touched upon that require amplification, although briefly.

1) Research Unit - There was a question as to the brief bank and its accessibility on weekends and evenings. My answer was that the microfiches of brief banks are outside of her office.* That has been confirmed.

I was also asked the number of persons supervised by her and I stated two. I suppose the purport of the question was whether Ms. Suarez's position justifies a head trial attorney status. The head trial attorney (8182) class is not limited to a role of supervision, but rather one of high responsibility within the office, such as a lawyer trying complex felonies or occupying an important staff role. At the time I proposed Ms. Suarez's upgrade in 1985, I fully discussed this issue with the Civil Service Commission and the Finance Committee of the Board of Supervisors. I received the concurrence of Harvey Rose, the

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*There is a smaller group of briefs that are housed next to the library in the computer room. The room is locked at night and on weekends for security reasons. But arrangements can be made to accommodate a person's immediate need. My home number and Ms. Suarez's are additionally listed.

Finance Committee, and the Civil Service Commission for this specific upgrade; because I demonstrated the function was of a significant nature and of a discrete type.

Ms. Suarez's knowledge and productivity is extremely impressive. She has been able to produce writs within an hour. She has given the office the capacity to respond to clear errors at the trial level, and she provides constant technical assistance to the staff. When disagreements have arisen with other staff members, she has taken criticism well and responded affirmatively.

2) Stated Policy on Promotions and Terminations - I was asked by several members what my policy is with regard to terminations and promotions. In regard to the former, I said:

a) Malfeasance - clear proof of wilful misconduct;

b) Serious misfeasance - clear proof that an error or omission of a very serious nature;

c) Lack of competence - a demonstrated pattern of inability to handle cases in a competent manner.

The list of examples of misfeasances, malfeasances, and the standards of minimum competence are set forth in the Office Manual. The list is not necessarily exhaustive, but it is sufficiently descriptive.

I was also asked what the policies for promotions are, and I stated:

a) Demonstrated proficient performance;

b) Professional growth;

c) Ability to accept assignments of a more complex character.

Those are not stated formally in the Manual, but they have been the subject of direct statement by me at staff meetings on June 10, 1986 and January 8, 1987;** and they are communicated by

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**The written statements are available on request.

supervisors to their charges at the time of the formal evaluations. There is no basis of doubt as to the basis of promotions. If a person misses a promotion, he or she is usually told why and what must be done for it to come about. The decision to promote is a matter of discretion by me, but it is a matter of guided discretion whereby I have the evaluation of the employee, statistical information about the employee's work, and the recommendation of the supervisor.

3) Experience - A question was asked whether I have hired attorneys out of law school, and I said I have. However, the impression should not be left that we are, as a rule, hiring inexperienced people. Of the last ten attorneys hired, five have come from other Public Defender offices, having had courtroom experience there -- Arthur Wong (Solano), Beth Cohen, Caryl Ohrbach, Sidney Glass (Marin), and Michael Sheltzer (Tulare). One other attorney, Robert Chan, is from the law firm of Morrison and Foerster with several years experience; another attorney, Mary Perdue, was the research attorney for the Muni Presiding Judge; and Christine Schenone came from the law firm of Hoberg, Finger after several years there. Roberto Quinones and Kenneth Norman came to us after passing the Bar, although both had pre-Bar training in Public Defender offices.

4) Training - There was a question about the training material, and an apparent confusion as to whether the Manual of Procedures was the primary training material. I answered that the misdemeanor supervisors have a Training Manual. I am herewith documenting that answer by sending a copy of the Training Manual.

You may have other questions, or may want other documents, and I am available at your request.

Yours very truly,

Jeff Brown
Public Defender

JB:cps

enc.

cc: Grand Jury Members

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EFF BROWN
ublic Defender

PETER G. KEANE
Chief Attorney

May 22, 1989

Ms. Caryl Mezey
Foreperson
City and County of San Francisco
Grand Jury
Room 165, City Hall
San Francisco, CA. 94102

Dear Ms. Mezey:

Please advise the members of the Grand Jury that I am in the process of preparing a detailed response to the Interim Report which you delivered on May 17. The initial draft response at this point is over 16 pages, not including appendices. The response will be delivered to you, with sufficient copies for all members of the Grand Jury, within the next few days.

I hope that the Grand Jury will review the response before the final version of your report issues. The response will indicate clearly many serious errors which are contained in the interim report. After the Grand Jury reviews this response, I request a meeting for consultation between myself and the Grand Jury in order to discuss the Interim Report and the response. This meeting can be in whatever format which is most convenient: either with the entire Grand Jury or with a committee of that body.

I respectfully suggest that this method is the appropriate fashion of communication between us, rather than an indirect dialogue through the newspapers.

Very truly yours,

Jeff Brown
Public Defender

JB:en

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FF BROWN
blic Defender

PETER G. KEANE
Chief Attorney

June 1, 1989

Confidential

Mrs. Caryl Mezey
Foreperson, Civil Grand Jury
1st Floor, City Hall
San Francisco, Ca. 94102

On May 18 and on May 31, 1989 you were reported in the San Francisco Recorder as having said in reference to the Grand Jury survey of my office, ". . . They [Mr. Keane and I] were not privy to the full scope of the investigation. They were only a part of it. They would have liked to have directed it all." (At p. 7.)

After mulling your remarks over for several days, I am at a loss to understand what provoked you to make this personal and out-of-the-record comment. The only time I tried to direct the attention of the Grand Jury to a concern of mine was in a letter to Mary Ellen Wilson dated October 4, 1988. At that time I suggested the Grand Jury look at three prominent and critical issues facing the office -- dependency cases, caseload standards, and the lamentable state of data processing. If this was seen as "directing it all," I am truly sorry. It is, however, a proper type of comment.

Perhaps, your remark has to do with my expressions, at various times this last year, with the manner in which the study was handled. But those expressions of concern were legitimate. I was told as early as September 1, 1988 that a Grand Juror was overheard at a cocktail party saying that there would be critical review of my office. The comment was made by a judicial officer to members of my staff and members of the District Attorney's Office.

In addition, members of my staff were called and told by Mr. McCarthy that they had to appear before the Grand Jury.* They were not advised that this was a civil grand jury and that this was a normal review of a department of government. These staff members reacted with fear: they thought they might be the subject of a criminal investigation, or that I might be. Petra Bonney told me that she had been unable to sleep after the call. More distressingly, the calls provoked rumors that I was the focus of an investigation for serious wrongdoing. The result, of course, was Peter Aronson's story in November. For that reason, I made concerns known to Mary Ellen Wilson, who was nice enough to say that my staf could call her and she would explain the nature of the inquiry.

There was unfortunately another matter that bothered me. On December 5, the day I was to appear before the entire Grand Jury, I was told that a document relating to turnover given to the Grand Jury Committee had been seen on the desk of a Superior Court Judge by a former member of my staff. It had added to speculation that the Grand Jury inquiry had been fueled by resentment by some judges of my decision to take Jim Pagano out of a supervision role.

There were other matters, which I could discuss some other time. But the sum and substance of this is that I did express concern about the objectivity and balance of the inquiry. I feel that the Interim Report bears out my fears. It is a document that says not one praiseworthy thing about the office. It is a document reflecting some misunderstanding that could have been cleared up with direct communication, something other than the highly-charged atmosphere of a Grand Jury room.

I did not, Mrs. Mezey, wish to direct the Grand Jury. Rather, I would have liked to talk to them in a normal manner, going over their concerns and expressing some of my own. It is rather tragic that this did not happen.

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*Only Grace Suarez asked whether the Grand Jury was civil or criminal.

This letter is submitted under the confidentiality provisions of Section 924.1 of the Penal Code. I do not intend to disclose its contents.

Yours very truly,

Jeff Brown
Public Defender

JB:cps

MISCELLANEOUS

ROB
MORSE

Are you anti- or pro-wrestling?

SO THERE was Mayor Agnos on KGO radio Wednesday morning, and did he want to talk about his recent trip to Asia? No way. He brushed that topic aside to talk about the pro wrestler Hulk Hogan, who last weekend received a proclamation from the mayor. It was a lively interchange, with Agnos clearing up important points such as "No, Miss Elizabeth is with Hulk Hogan, and Sensitive Sherry is with Macho Man." Whatever you do, don't tell the mayor that pro wrestling is fake. . . . Bets are hedged in the Pelosi family. Nancy Karen Pelosi, the daughter of Rep. Nancy Pelosi, has left the mayor's Office of Protocol to go to work for Dianne Feinstein's gubernatorial campaign (reportedly, Mayor Agnos told her she'd be back in two weeks). Meanwhile, her sister Christina is working for John Van de Kamp. This is definitely a political family. Surely there's a kid available for Gray Davis. . . . Thought for the day: You can be sure there will be plenty of controversy about how to use San Francisco's greatest undeveloped piece of land, but when the going gets loud here's a way to keep it all in perspective: Imagine how San Franciscans would react if the Presidio was about to be taken over by the Army.

Special for Bay to Breakers: The magazine Men's Health informs us that male runners' sperm can beat the sperm of non-runners. Ronald Burke, M.D., of the University of Massachusetts Medical School, found that runners have a sperm count one-third higher than non-exercisers. He also set up a sperm race, and runners' sperm outswam the nonrunners' sperm by 30 percent. What do you call that race? Boy to Beakers? . . . Tom Sweeney, doorman at the Sir Francis Drake Hotel, heard this story from a Canadian tourist: A panhandler approached her for spare change and she gave him a Canadian dollar. Indignant, the indigent handed it back, saying, "Hey, I only accept American money." . . . The latest from small claims court: Bay World Trading has sued DM International over the sale of 54 ounces of cattle gall stones, considered in some places to be an aphrodisiac. Court clerk Ralph Baxter says, "I might have to quit soon. These courts are getting too kinky for me."

A San Francisco grand jury has released a report accusing the public defender's office of mismanagement. There are some serious charges, like high attorney turnover, but most of the document reads like Capt. Queeg's case of the missing strawberries. Much is made of office hours not being kept and there not being enough keys to the research library. Members of the public defender's office say that no one asked how well they serve their 23,000 clients. They claim the report is a hit job motivated by disgruntled former employees friendly with a couple of Superior Court judges. . . . Revise that item about the leading candidates to design the new San Francisco

Letters To The Editor

Public Defender's Office Deserves Praise, Not Probe

The recent report by the San Francisco civil grand jury regarding the public defender's office misses the point.

Young and not-so-young lawyers are leaving the public defender's office and other government law offices because of the lag in salary and impossible working conditions. While our collegues in private practice may start out in excess of $60,000 a year fresh out of law school, public service attorneys are not realizing that much salary even after as much as five years of service. And forget about having your secretary of your office; there are as many as two to three assistant district attorneys or deputy public defenders squeezed into what passes for an office and what would be a good-sized closet in a downtown law firm. Attorneys in the public sector work longer hours for less pay in deplorable working conditions and receive little apreciation for their efforts. Yet they continue to do so because the commitment and satisfaction of public service cannot be met in any other forum.

The San Francisco public defender's office may suffer from some internal dissension. What organization doesn't? The San Francisco public defender's office continues to provide top-notch legal aid for its clients. It is a downright lie to state that there has been an inability to adequately represent defendants in capital cases. This absurd conclusion alone casts serious doubt on the grand jury report. The public defender's office always puts its top men and women to work on any case in which the death penalty is a possibility. With extraordinary funds available from the state for investigation, these attorneys give their clients their all, and then some. The representation afforded defendants by the San Francisco public defender's office in capital cases, and in all serious felonies, is unquestionably the best and highest quality. One could not obtain better attorneys than Public Defender Jeff Brown assigns to the defense of serious felonies. I know because I am an assistant district attorney with 14 years experience going up against private attorneys and deputy public defenders. I have never questioned the defense received by a criminal defendant when represented by someone from Mr. Brown's office. I regretfully cannot say that about some attorneys who are paid directly by their clients.

Furthermore, Jeff Brown and Peter Keane, his chief assistant, have gotten down into the pits with their deputies and tried cases alongside them. I personally was involved in a grueling three-month capital case in which the defendant was represented in court by the public defender and his chief assistant. A better defense could not have been obtained. Experienced prosecutors can only smirk when some loudmouthed know-it-all decides to fire his public defender and get a "real lawyer." That might be the case on *L.A. Law* but not in San Francisco.

Under the auspices of Jeff Brown, every one of his deputies must become a certified specialist in criminal law, thus assuring competency among the staff. Peter Keane is also president of the Bar Association of San Francisco and should be applauded for bringing public sector lawyers into the mainstream of downtown lawyers. Mr. Keane has demonstrated again and again that there is not, and need not, be any division between attorneys who represent megabuck clients and those who argue the plight of an accused murderer or petty thief. Mr. Keane's involvement in local and State Bar activities allows public sector lawyers to share in and become part of the broader legal establishment.

The next time the civil grand jury wishes to "investigate" the public defender's office, perhaps it should start with those attorneys who oppose the public defender's office daily. I, for one, will tell them that no public defender ever made my job easier, ever gave me a break or ever allowed me an easy way out, and for that I thank them. Jeff Brown and his office deserve our praise.

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Ms. Caryl Mezey
Foreperson, Civil Grand Jury
Room 158B, City Hall
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San Francisco, CA 94102

Dear Ms. Mezey:

I am an attorney in San Francisco who formerly served as a Deputy Public Defender. I am taking the liberty of addressing this letter to you in the hope that it may be considered in the preparation of the Grand Jury's final report on the Public Defender's Office. My assumption is that the purpose of the Grand Jury's investigation was to gather facts from which conclusions and recommendations could be made concerning the functioning of the office. After reading the interim report, I found that some of the conclusions must have been based on factual information which was extremely inaccurate. The purpose of this letter is to provide the committee with factual information about those matters so that the committee will have a more realistic perspective when preparing its final report. I do not presume to address any issues which treat matters outside the purview of my personal experience or observation. Nor do I choose to relate anything about which I do not have personal knowledge or which is based only upon conjecture or innuendo, since I presume this type of information would be of no interest to the committee.

The finding is made in IA that less experienced attorneys need the support and guidance of supervisors and peers and that group discussion is discouraged. There is no doubt that one of the best learning experiences an attorney may obtain is guidance from those more experienced in his or her field. Anyone who told the committee that group discussions among peers was discouraged must have never walked by my office on virtually any afternoon of the week. I literally cannot remember a day when at least one attorney did not come into my office inquiring about a specific theory or procedure in the handling of a case. I can also state that no one ever directly or indirectly discouraged such discussions.

The finding is made in IB that there was no appeal to decisions made by the Head Attorney of the Investigative Unit. I can unequivocally assure you that is absolutely false. I came to the Public Defender's Office after extensive criminal practice in another state. I was accustomed to hiring investigators and giving them assignments in my own way. My way was not the way of the attorney who was heading the Investigative Unit at the time. Consequently, I had several investigative requests returned. On each occassion I went to my Unit supervisor and the supervisor

promptly intervened and insured that the investigation was done. There was an appeal process and it worked.

There are findings in both IIB and IIC which relate to promotions and terminations which indicate that such decisions are made on an indiscriminate basis with no guidelines. Since I was not involved in any of these decisions, I cannot addrress the basis upon which they were made. However, the findings approach the issue from the standpoint of appearance and morale; which I can address. I find it illuminating that the committee was provided with information that less-experienced attorneys had sometimes been promoted over more-experienced attorneys; but apparently no information sufficient to support a finding that less-qualified attorneys were promoted over more-qualified attorneys. Personally, I would rather serve in an office where the promotions are based on ability rather than longevity. As far as terminations, the committee was given information that attorneys are fired witout explanation. It should go without saying that any employee has the right to an explanation as to why he or she is being terminated. It should also go without saying that I have no right to know why another attorney in the office was terminated, and would not want to work in an office that made such announcements. Short of such an unethical and illegal policy, terminations are always going to be the subject of innuendo and rumor. I have been an attorney for a long time and am still waiting for a fellow attorney to walk up to me and admit incompetence.

There are findings in III relating to the training and preparation of new attorneys in facing the calendar requirements of San Francisco courts. I doubt that the committee could find anyone who has a stronger belief in the necessity of continous training and education than myself. Before moving to California, I practiced in Texas, where I helped plan and participated in one of the first criminal specialization programs in the United States. I also supported Mandatory Continuing Legal Education, which Texas adopted, and taught extensively there; something I continue to do here. I also abhor the concept of "trial by fire," and personally believe that no attorney should be allowed in a courtroom without some sort of apprenticeship program. Unfortunately, all Public Defender Offices seem to be forced to operate on the "trial by fire" theory due to to funding and staffing problems. During my tenure in the office, there would have been havoc if anyone who was in an attorney slot which anticipated the carrying of a caseload did not have a caseload. Thus, after a short indoctrination period, an attorney is forced to assume such a caseload and undergo on the job training. The only way to resolve this problem would be do fund an office so that it could have staffing levels sufficient to insure that no new attorney would have to accept this responsibility. If that is the point the report is ultimately making, I certainly applaud it.

Finally, I would like to address a point which is made in IA regarding office hours as it relates to a broader theme which pervades several areas of the report. Findings are made about various activities of the Public Defender and Chief Attorney which require time spent away from the office. The implication seems to be that these activities are some sort of disservice to the office or result in an abrogation of management duties. If there is specific evidence that office management is affected by these activities then I would agree that the implication is warranted. However, from a personal standpoint, I believe office morale is enhanced by the fact that the Public Defender and Chief Attorney take an active role in making the public and legal community aware of the office's presence and function. As for the Chief Attorney's teaching positon, one should note that the San Francisco District Attorney's Office, the Alameda County District Attorney's Office, and the Alameda County Public Defenders Office all have more attorneys on the adjunct faculty at Hastings than does our office. This is a traditional resource which law schools draw upon, and which serves to benefit both the law school and the legal community. More specifically, it benefits the Public Defender's Office because it serves as a direct recruiting tool. I have no way of knowing whether the Chief Attorney's teaching has led directly or indirectly to anyone joining the office, but I do know that last year I spent my own Memorial Day weekend teaching a trial practice course at Boalt Hall to a group litigation associates from large civil firms and soon thereafter one of them applied for a position in our office. This is how quality people are recruited into an office.

There are other matters raised by the report which I certainly have an opinion on, but since this is an unsolicited letter I do not feel that I should impose on your time any more than I have. I certainly am willing to make myself available to the committee at anytime in the future if it wishes to interview me. I also hope that the committee accepts this letter in the spirit in which it is intended, which is to provide facts which will aid the committee in ensuring that indigent defendants in San Francisco receive the best possible representation. I doubt that there is a public agency in the country that could not alter some of its policies in some fashion so as to better serve its constituents. My intent in pointing out the factual misinformation which I feel the committee was provided with is to further facilitate that goal. I appreciate your consideration of this letter for such a purpose.

Yours most sincerely,

Barry P. Helft